IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO. 23 OF 2000

1. Narayan Bala Patil
2. Sanjay Narayan Patil
3. Rajendra Narayan Patil
4. Vijay Narayan Patil ..Appellants. (Orig. Accused Nos. 1 to 4)

V/s.

The State of Maharashtra ..Respondent.

Shri S.V. Kotwal and M.S. Mohite for the appellants.
Mrs. P.H. Kantharia,A.P.P. for the State.

CORAM : V.G.PALSHIKAR &
ANOOP V.MOHTA, JJ.

DATE : 18TH OCTOBER, 2004.

ORAL JUDGMENT (**PER ANOOP V. MOHTA, J.)**

. INTRODUCTION :- This is an appeal filed by original accused Nos. 1 to 4, appellants 1 to 4, herein against the judgment and order dated 13/12/1999, passed by Vth Additional Sessions Judge, Sangli, in Sessions Case No.92/1995 and thereby convicted the appellants under section 302,307 r/w section 34 of Indian Penal code and sentenced them to suffer rigorous imprisonment for life and seven years respectively, and has passed and other related orders. Therefore, this appeal against the order of conviction.

2. FACTS:- The facts in a nutshell are that on 29/1/1995 at about 11.30 a.m. in village Dhavali, Tal. Miraj, Dist. Sangli, appellants-accused 1 to 4 with the accused No.5 Chhabutai, assaulted deceased Ananda Bala Patil and the real brother of accused No.1, Narayan Bala Patil and Krishnarao Anand Patil, who is son of Ananda Bala Patil, in the Course of sudden quarrel, over the partition of the ancestral property. On 29/11/1995 the deceased Anand Bala Patil had gone to Miraj at about 8 a.m. and instructed his family members not to pay any head, if Narayan Bala Patil does anything or picks up any quarrel. The complainant Kanthabai, P.W.1, Appaso Patil, her sister-in-law Surekha Krishnarao Patil, P.W. 3, Sakhubai Dattu Gavankar, P.W. 3, real sister of the deceased and accused No.1, and the disabled brother of the deceased and accused No.1, Shri Govind were in the house. Appaso the elder son of the deceased and his mother Rukmini had gone to the land. Accused No.1 Narayan Bala Patil, suddenly came and locked the northern side door of the house of the deceased, from outside. At about 11. 30 a.m. deceased returned from Miraj with his younger son Krishnarao P.W.r and the

complainant Kantabai told them that Narayan locked the front door from outside. Deceased Anand Bala Patil therefore, took a hacksaw blade from the house and went to the front door to cut the lock. The accused No.1, however, resisted and asked the deceased not to cut the lock. The complainant and other witnesses went towards the corridor where deceased Narayan Patil were quarrelling . The accused Nos. 2 to 4 who are the sons of accused Narayan Bala Patil, also came there. The wife, (accused No.5) of the accused had also came there. The accused No.1, Narayan Patil and accused No.2 Sanjay had sickles in their hands. Accused No.3, Rajendra had knife. Accused No.4, Vijay, had gupti in his hand. The exchange of words led into the quarrel between the deceased and accused No.1 and in that process accused No.1 gave blow of the sickle on the head of the deceased and same was witnessed by Krishnarao Patil, complainant Kantabai, Sakhubai and Surekha. Accused No. 5 Chhabutai was beating the above ladies by hands and pushed Kantabai forcibly on the ground. Complainant tried to intervene. The brother of deceased Govind P.W. also tried to intervene but accused Rajendra and Vijay pushed him aside. The accused No.1 Narayan Bala and his

sons were continuously beating the deceased. The neighbourers, Shri Babu Patil Tanaji Patil, Ankubai Patil and Keshav Patil and others gathered on the spot. The complainant, Kantabai, and Surekha went to the police station at Miraj. On the way Appaso, younger son of deceased and Rukmini the wife of deceased met them. Kantabai and Surekha told them about the incident and went ahead towards the police station. On the way they saw police jeep and therefore, by hand signal they halted the said jeep and informed about the incident. Appaso and Rukmini rushed towards the spot. Kantabai and Surekha, as directed went to the police station and police jeep proceeded towards the incident. The police jeep came back and these two ladies were taken in the jeep, where the accused were present. The injured was also in the jeep. Krishanarao informed to Kantabai and Surekha that his father succumbed to the injury on the spot. They all went to the police station. The injured Surekha and Krishnarao were sent to the hospital. Kanthabai therefore, lodged complaint at the Police station, Exh.41, which was registered as Cr.No.11/1995. The Investigation was carried out by A.P.I. Shri Bhandare P.W. 14. On the spot, P.W. 14, Bhandare went

along with the complainant, inspected the dead body of Anand Patil,which was lying in the pool of blood. The inquest panchanama Exh.21 and the scene of offence Exh. 78 were drawn in presence of the panchas. The dead body was sent to the Civil Hospital, Sangli, for post mortem. The blood samples were also collected and sealed. The Investigating Officer Shri Bhandari recorded the statements of witnesses. The accused Nos.. 1 to 3 were arrested under the arrest panchanama Exh.83. Clothes on the person of accused No.1 to 3 were also attached.

3. On 30th January, 1995 the statements of 18 witnesses were recorded. At the instance of accused No.1, sickle (article NO.5) was seized under panchanama Exh.102. The article No.6 a sickle was seized under panchanama Exh.22 at the instance of accused Sanjay Exh.22A. A knife was recovered at the instance of accused Rajendra (Exh.71) and (article No.7) . Accused Vijay was arrested on 1/2/1995 Exh.74. The clothes of accused Vijay were also attached Exh.23 on 2/2/1995. The weapon was recovered at the instance of accused Vijay (statement Exh.25) was seized vide panchanama Exh.83. The blood samples were taken on 3/2/1996,. On

6/3/1995 accused No. 5, Chabutai was arrested under the arrest panchanama Exh.75 and her blood sample was taken on 8/3/1995. Her clothes were also seized vide memorandum panchanama Exh.24. The blood samples of the injured persons Shri Kirshnarao and Surekhabai were also taken on 20th March, 1995. Immediately, the articles were sent to the Chemical Analyser, Pune on 9/4/1995. The C.A. Reports is produced on 26/7/1995 (Exh.104 to 111). After due investigation, the relevant charges were framed against all the accused. Their defence was of total denial in the statement under Section 313 of Cr.P.C. They stated to have been falsely implicated in the case.

4. POINTS DECIDED BY THE TRIAL JUDGE:- The learned Sessions Judge after considering the material as well as, evidence placed on the record held that on 29/1/1995 deceased Ananda Bala Patil met with homicidal death Accused Nos. 1 to 4 have committed murder of deceased Ananda Bala Patil. It is also held that accused Nos.1 to 4 have attempted to commit murder of Krishnarao Patil in furtherance of their common intention and thereby committed offence punishable under Section 307 r/w

section 34 of Indian Penal Code. Therefore, has finally imposed punishments against accused Nos.1 to 4 under section 302 and 307 r/w section 34 of Indian Penal Code.

5. The learned Sessions Judge however, held that the prosecution has failed to prove that accused Nos. 1 to 5 had constituted unlawful assembly with common object to commit murder of Ananda Bala Patil and not committed any offence of rioting punishable under Section 147, 148 149 r/w 307 of Indian Penal Code. Therefore, the prosecution case of unlawful assembly with weapon like sickle, knife, Gupti and with common object of unlawful assembly was rejected. Therefore, this appeal against this order of conviction by the appellants.

6. SUBMISSIONS OF THE PARTIES:- Heard learned Counsel, Shri Kotwal appearing for the appellants and Mrs. Kantharia,A.P.P. for the State. We have noted the appellants' submission based on the grounds of appeal as raised in the memo of appeal and we have also heard the oral arguments of the parties.The A.P.P. submitted in support of impugned judgment. We have gone

through the record of the case with the assistance of the advocates.The appellants' advocate contended that the impugned judgment and order has been passed without considering the relevant facts and it is based on contradictions, omissions and improvements. Four alleged eye witnesses were interested family members of the deceased Ananda and injured Krishnarao. They were on enemical terms with the family of the accused. Not a single independent witness was examined. All these 4 witnesses are got up witnesses. Therefore, the trial Court ought to have disbelieved the highly interested evidence of Kantabai, P.W. 1 and Sukubai P.W.2, Surekha, P.W. 3 and P.W. 4 Kirshnarao. He further contended that there was no proper investigation in the present case, to convict the accused under Section 302 of Indian Penal Code and the learned Judge ought to have considered to apply under section 304 (1) or (2) of Indian Penal Code. He further contended that accused Nos. 2,3 and 4 were falsely implicated The recovery of weapons and clothes of the date of incident were also highly doubtful. Therefore, prays for acquittal.The accused No.2 is on bail, however, accused 1,3 and 4 are in jail. The learned A.P.P. further supported the

judgment and basically contended that there are eye witnesses which include the injured witness. Some omissions or improvements may not disturbs the main testimony of the eye witnesses. There is no reason to disbelieve the evidence of eye witnesses and other corroborative evidence. There are no lacunas and even if, there are lacunas, those lacunas are not sufficient to discard the prosecution case in toto. Therefore, submitted to maintain the order of conviction.

7. REASONING:- HOMICIDAL DEATH :-There is not much dispute about the homicidal death of the deceased. The post mortem report Exh.68, medical certificate Exh.69 r/w evidence of Dr. Rajput has substantiated that the cause of death was shock due to right lung rupture with haemothorax, caused from the injuries which are described in column NO.17 of the post mortem report Exh.68. This report further shows that the deceased had sustained serious injuries to the internal organ, which resulted into profussed bleeding which caused death. Therefore, there is no doubt that the nature of the injuries caused to the deceased by the accused with sharp edged weapons in question, substantiated the

prosecution case of homicidal death.

8. RELIABLE EYE WITNESS :- There are four eye witnesses which have substantiated and corroborated the prosecution case, to link the commission of the offence, in question by the accused Nos. 1 to 4. Those witnesses are P.W.1 Kantabai, P.W. 2 Sakubai, P.W. 3 Surekha, P.W. 4 Krishnarao. In addition to this the prosecution has completed the chain of events by placing on the record various material documents duly proved by other corroborative evidence including medical evidence. The testimony of these witnesses remained intact. The defence could not extract anything in their favour except some contradictions or omission or improvements as alleged, which according to us nowhere destroy the prosecution case, or disprove, these 4 eye witnesses. There is nothing which is extracted or can be said that these witnesses are not reliable or got up witnesses as contended. There are no prejudicial lacunas in the prosecution investigation. The prosecution according to us, has substantially brought the material, as well as evidence on the record and therefore, the learned Judge has rightly convicted the accused under the respective

offences.

The Apex Court has held that,

> "In such a situation to reject the entire evidence on the sole ground that it is partisan is to shut one's eye to realities of the rural life in our country. Large number of accused would go unpunishable if such an easy course is charted."
>
> "Although the evidence of a partisan witness must not be discarded on that ground alone, the court must be on guard to scrutinise their evidence with more than ordinary care."

Some of those cases are:-

(i) State of Uttar Pradesh Vs. Ballabh Das and others (1985) 3 SCC 703.

(ii) Muthu Naicker and others Vs. State of Tamil Nadu 1978 Cri.L.J. 1713.

9. The ancestral property dispute between the parties was the main reason which resulted into initial quarrel and then the commission of the offence in question. Even though as alleged, the other property dispute was settled, still the quarrel erupted for the

ancestral property. This is sufficient to conclude that there was a motive to commit the offence. The enmity between two families for ancestral property is like two edged weapon. This enmity between the family for the property has to be taken into consideration with due care and cautious while considering the case of such murder. But the fact that there was homicidal death of the deceased, which was due to an assault by the accused 1 to 4, in presence of other family members, who were present at the time of the incident, in question cannot be discarded. Those family members even though are related or interested witnesses cannot be thrown out on this sole ground. When direct eye witnesses are faithful, even though they are from the family of the deceased, such witnesses and their testimonies cannot be discarded, merely because the prosecution has failed to examine any other independent witnesses which were present at the relevant time and could have been available. These lacunas, if any, cannot over ride the substantial evidence put on the record by the prosecution, as that of the eye witnesses and or injured witnesses. The circumstantial evidence and testimony of other witnesses, which corroborates the substantial

evidence, as led by the prosecution and as narrated in above paras, even through the interested or related or injured the conviction order is within the frame work of law and record. In the present case, conviction is based on these eye witnesses and according to us that cannot be thrown away, at the instance of the appellants, merely on the basis of some omissions or contradictions or discrepancies as contended.

10. We have also noted, after going through the testimonies of these basic witnesses that those four eye witnesses have given different stories in so far as, the participation and the attack by the accused Chhabutai (accused No.5). There is no appeal against the acquittal of accused No.5 and against the acquittal of the accused under section 147,149. The corroborative testimony of the some witnesses however cannot be over looked in reference to all other accused i.e. appellants 1 to 4.

11. Much is said about the spot of occurrence in the present case. The spot panchanama Exh. 78 itself shows that the body of the deceased was found out side the

house and not near the sofa. The fight or quarrel started initially in the house near Sofa as narrated by the eye witnesses, but Narayan Bala Patil accused No.1, took the hacksaw from the hands of the deceased. He caught hold shirt of the deceased and drawn him out of the door of the house and took him out in the courtyard. Thereafter, accused Narayan Bala Patil gave blow of sickle on his head and Vijay gave blow of the big knife. Accused Rajendra gave blow of knife, accused Sanjay gave blow of sickle on the deceased. These witnesses also states that they come out in the courtyard and tried to rescue the deceased. Therefore, in the map Exh. 23, prepared by Circle Officer, P.W. 16 the spot of occurrence was shown out side the house and not near the sofa, according to us, that itself cannot be the reason to disbelieve the map and spot of occurrence itself. The deadbody was found in the pool of blood out side, the house. Even if, we assume for a moment that there are some contradictions and omissions so far as the spot in question, but according to us such discrepancies cannot support the defence to claim total acquittal. In the present case we have noted there is sufficient evidence on record to show that the incident occurred

and or ended on the public road in front of the house i.e. Vithal Niwas. The evidence of the eye witnesses on this point cannot be said untruthful or unreliable. According to us, spot of occurrence and panchanama with the testimony of the witnesses are sufficient to link the material evidence to up hold the conviction. The eye witnesses, except against accused No.5, corroborated the prosecution story about the assault by the accused Nos. 1 to 4 by the weapons in their hands.

12. CORROBORATIVE EVIDENCE:- The medical evidence supported by the post mortem report and evidence of Dr. Rajput, P.W. 5 further support the prosecution case that the injuries on the dead body of the deceased were caused by the weapons in question, which were used by the accused. There is no much dispute about the recovery and discovery of these weapons like sickle, dagger having human blood stains on it. The testimony of all these witnesses further proved beyond reasonable doubt that accused No.1 Narayan Bala Patil and accused No. 2 Sanjay Narayan Patil, and accused No.3 Rajendra and Accused No.4 Vijay had committed the murder of Anand Bala Patil and attempted to commit the murder of

Krishnarao Ananda Patil in furtherance of their common intention.

13. It is settled that it is not the quantity of the witnesses which is material but it is quality of even single witness which can be relied upon. It is one of those cases were there are about 4 eye witnesses to corroborate the basic incident of assault by appellants 1 to 4, which resulted into the homicidal death of the deceased and injuries to Kirshnarao.

14. We have heard Counsel appearing for the appellants and on the various omissions and improvements, which according to us are not sufficient to acquit the accused. We have gone through the alleged omissions or improvements but after going through the basic testimony of these witnesses so far as accused No. 1 to 4 are concerned, according to us also the prosecution has failed beyond reasonable doubt, their guilty mind and guilt.

15 The learned Sessions Judge however, has acquitted all these accused under sections 147 and 149

and there is no counter appeal against them. Therefore, all these omissions or discrepancies or contradictions, as referred by the learned advocate for the appellant accordingly no way support the case of appellants to set aside the order of conviction as above. We also find that this is not case of sudden fight or grave provocations. The way in which appellants/accused have attacked and assaulted the deceased and grievously hurt Kirshnarao, they were fully aware of their action. They have attacked intentionally and mercilessly beaten and killed the deceased. The injuries, as well as, the nature of injuries apart from the multiple injuries shows their brutality. Therefore, only because there was some lacunas in the prosecution or there are some discrepancies or omissions or contradictions as alleged, according to us, the prosecution witnesses have proved their case and we have also no doubt that the appellants have committed this offence.

16. RESULT:- In view of the above reasoning, we see there is no reason to interfere with the order of conviction and sentences as imposed above by the learned Sessions Judge. There is no merit in the appeal.

17. Appeal therefore, dismissed.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]